Subject Index

	Page
Statement of the case	1
Questions presented	3
Argument	4
Conclusion	7

Table of Authorities Cited

Cases

	Pages
Ferguson v. McCormack Lines, Inc., 352 U.S. 521	7
Kennedy v. Silas Mason Co., 334 U.S. 249	7
Mortenson v. Pacific Far East Lines, 148 F.Supp. 71	2
Rogers v. Missouri Pac. Ry. Co., 352 U.S. 500	7
Schultz v. Pennsylvania Ry. Co., 350 U.S. 523	7
Skovgaard v. M. V. Tungus, 252 F.2d 14, affirmed in The Tungus v. Skovgaard, 358 U.S. 588	2, 4, 5
United New York & New Jersey Sandy Hook Pilots Assn. v. Halecki, 358 U.S. 613	5
Webb v. Illinois Central Ry. Co., 352 U.S. 512	7

Texts

Restatement of Torts, Volume II, Section 434	6

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 969

STATES MARINE CORPORATION OF DELAWARE, a Corporation,

Petitioner,

vs.

ARMIDA ALDRIDGE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE.

Respondent adopts petitioner's "Statement of the Case" with the following amplifications:

1. The original action filed in the Superior Court of the State of California, and removed to the District Court for the Northern District of California,

was in two counts, unseaworthiness and negligence. After petitioner had moved to dismiss in the District Court, respondent filed an amended complaint based solely on negligence. The unseaworthiness count was dropped because the District Judge who heard the motion to dismiss, had already ruled in a prior case that the doctrine of unseaworthiness, while applicable to longshoremen *injured* aboard ship, does not apply in the event of death.*

2. Petitioner states (p. 5) "that the charging allegation against the defendant was that it negligently failed to provide band cutters or some other proper means whereby the bands around the load of dunnage could be cut or broken". This is not a full statement of the charging allegations of the complaint. These allegations were summarized by the Court below in its opinion (Appendix to Petition, pp. x and xi) as follows:

> "The complaint alleges that as Aldridge was performing his work of stowing the cargo being loaded, he and other longshoremen with him required dunnage made up of sticks and boards, for use in wedging and stowage of the cargo. As the dunnage was lowered into the hold it was held in bundles by metal bands. The longshoremen asked the defendant's officers for band cutters to break the bands. The latter advised they had no cutters, but sent a carpenter with hammers to do

*Mortenson v. **Pacific Far East Lines**, 148 F.Supp. 71. Decision rendered prior to the decision of the United States Court of Appeals for the Third Circuit in *Skovgaard v. M. V. Tungus*, 252 F.2d 14, and affirmed by this Court in *The Tungus v. Skovgaard*, 358 U.S. 588.

that work. For a time this method of opening the bundles was provided. Later, when it became necessary to break the bands of additional dunnage, similar requests were made of defendant's officers, 'but the defendants did negligently and carelessly . . . fail to provide or supply, either persons or proper means . . . and by reason thereof the one means and method remaining to said longshoremen . . . was to employ the book secured to the winch, by inserting the same in the steel bands and thereafter raising the load of dunnage and attempting to break the steel bands by means of the weight of said dunnage, through raising the dunnage into the air and causing the weight thereof to break said straps; by reason of the aforesaid it was necessary to, and the said longshoremen did, use said method of breaking the dunnage straps for a period of several hours, during all of which the defendants negligently and carelessly failed to supply any band cutters, or any persons to cut or break said bands, and in the course of such operations, at approximately 1:55 o'clock a.m., upon the breaking of the bands of one of said dunnage loads several heavy timbers did break loose and did fall upon said William J. Aldridge, directly and proximately inflicting upon him serious and fatal injuries from which he died en route by ambulance to a hospital."

QUESTIONS PRESENTED.

Respondent does not agree with petitioner's statement of the "Questions Presented". It is respondent's position that the sole question presented to this Court is whether the decision of the Court below is

correct in holding that respondent's first amended complaint sets forth facts sufficient to entitle her to go to trial thereon and whether that decision should be reviewed here on the present record.

ARGUMENT.

Petitioner's contentions in support of its petition may be summarized as follows:

I.

Petitioner contends that under California law a complaint which discloses on its face that harm to a business invitee occurred as a result of an obvious danger, fails to state a cause of action. The amended complaint here involved, says petitioner, discloses the presence of an obvious danger and falls within this California rule. The Court below, petitioner contends, was bound by this Court's decision in *Skovgaard* to follow the California law and was therefore in error in holding that the allegations of the amended complaint state a cause of action.

This argument is fallacious for at least two reasons.

1. Assuming, but not conceding, that the general California law is as stated by petitioner, the amended complaint does not show on its face, neither directly nor by inference, that what the longshoremen were doing when Aldridge met his death constituted an obvious danger.

2. Here, as in *Skovgaard,* the Courts of California have not construed the California death statute in

cases involving deaths on navigable waters. It might very well be, as stated in *Skovgaard* with reference to the New Jersey law, that California Courts would impose an entirely different rule than the rule claimed by petitioner to be the California rule with reference to injuries on land. Absent decisions of the California Courts construing that State's wrongful death statute as applied to accidents on navigable waters, the Court below has the right, as was done in *Skovgaard,* to substitute its own conclusion as to the construction the California Courts would give to the state statute if and when faced with the facts here involved. In any event its ruling on this point, at the pleading stage, should not now be reviewed by this Court.

II.

Petitioner contends that the decision of the Court below constitutes an improper extension of this Court's decision in *United New York & New Jersey Sandy Hook Pilots Assn. v. Halecki,* 358 U.S. 613.

The amended complaint here involved sets forth *stronger* facts supporting negligence liability than were present in *Halecki.* Here the amended complaint charges that the shipowner failed to provide proper tools (band cutters) and trained personnel (the ship's carpenter) to perform the job of "breaking out" the dunnage, *despite requests made therefor by the longshoremen.* Apparently in *Halecki* the shipowner had no actual knowledge of how Halecki and his fellow workers were performing their job. Here the shipowner obviously did know what was going on and took no steps to correct it. At least the Court below

had the right so to construe the amended complaint and was correct in deciding that respondent should be given an opportunity to prove these facts on a trial.

III.

Petitioner seeks to enlist the aid of §434, Vol. II, Restatement of Torts, in support of its petition. This section provides as follows:

> "It is the duty of the Court to determine whether, upon the facts which are admitted, found by special verdict or reasonably inferable from the evidence, the actor's conduct is a substantial factor in bringing about harm to another, unless the question is open to a reasonable difference of opinion, in which case it is to be left to the jury."

The heading of this section reads "Functions of Court and Jury". This heading, and the comments following the quoted section, leave no doubt but that the section concerns itself with the duty of the Court following a *trial*, taking into consideration, of course, any admissions of fact made by the pleadings.

Petitioner states that the "facts of the accident as alleged in the complaint are not in dispute". This is not an accurate statement, unless petitioner is willing to concede the truth of respondent's allegations concerning the failure of the shipowner, upon request, to furnish band cutters and a ship's carpenter to assist the longshoremen in "breaking out" the dunnage. We are quite certain that when petitioner files its answer, there will be a denial of these allegations, and that

at time of trial there will be a sharp dispute as to the facts of the accident and the events leading up to it.

CONCLUSION.

We respectfully submit that the decision of the Court below, that respondent is entitled to go to trial on the allegations of her amended complaint, is consistent with, and a contrary decision would be directly opposed to, the views expressed by this Court in the following cases: *Schultz v. Pennsylvania Ry. Co.*, 350 U.S. 523; *Rogers v. Missouri Pac. Ry. Co.*, 352 U.S. 500; *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521, and *Webb v. Illinois Central Ry. Co.*, 352 U.S. 512. No issue not explored in those cases is presented here.

Furthermore, good judicial administration requires this Court to withhold decision until the record before it presents a "solid basis of findings based on litigation". *Kennedy v. Silas Mason Co.*, 334 U.S. 249. That is not the record on which petitioner now seeks the writ.

The petition for writ of certiorari should be denied.

Dated, San Francisco, California,
June 25, 1959.

Respectfully submitted,
GLADSTEIN, ANDERSEN, LEONARD & SIBBETT,
RICHARD GLADSTEIN,
NORMAN LEONARD,
Attorneys for Respondent.